

P-999/CI-90-235 ORDER DENYING MOTION FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner

In the Matter of a Commission-
Initiated Proceeding to
Determine Whether Resale of
Local Telephone Service is in
the Public Interest

ISSUE DATE: July 15, 1993

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ORDER DENYING MOTION FOR
RECONSIDERATION

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On January 19, 1993, the Commission issue its ORDER AUTHORIZING THE RESALE OF CENTRON SERVICE. In the Order, the Commission found that CENTRON resale is required by the public convenience and necessity in U S West Communications, Inc.'s (USWC's) exchanges provided that it does not produce adverse impacts on USWC's general ratepayers. The Commission specified that any contribution that resale of Centron service prevents USWC from experiencing will be recovered from CENTRON resellers, but deferred to USWC's next rate case or incentive plan (whichever came first) 1) the quantification of such loss and 2) determining what adjustment to USWC's CENTRON rates should be made to recover such loss.

On January 29, 1993, USWC filed a Motion for Reconsideration. USWC argued that at the same time it authorized the resale of CENTRON the Commission should have allowed USWC to impose a surcharge upon CENTRON customers to recover the contribution impact of that resale.

On February 8, 1993, USWC filed a brief in support of its motion.

On February 8, 1993, the Minnesota Department of Public Service (the Department) and filed its response to USWC's motion. The Department stated that while it had recommended the surcharge in the case, it was within the Commission's discretion to defer imposing a new pricing mechanism until some future time. In the Department's view, the Commission's policy decision that it intends to price resold CENTRON to avoid harm to other ratepayers in the future is sufficient to make a finding that CENTRON resale is in the public interest.

On February 18, 1993, Enhanced Telecommunications, Inc. (ETI) filed its response to USWC's Motion and Brief in Support of Motion. ETI argued that there was no basis for reversing or amending the Commission's January 19, 1993 Order.

On June 22, 1993, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. COMMISSION ANALYSIS

USWC's only substantive disagreement with the Commission's January 19, 1993 Order was the Commission's decision to defer until a subsequent proceeding the implementation of a surcharge upon CENTRON resellers. USWC advanced several arguments on behalf of its positions that the Order was unwise and erroneous as a matter of law by failing to authorize USWC to impose an immediate surcharge upon the CENTRON resellers to recover the lost or displaced contribution calculated by the Administrative Law Judge (ALJ) in his Report. Those arguments will be taken up in order.

A. Arguments that the Decision to Defer the Rate Design Question was Unwise

1. The Decision Will Cause Needless Reconstruction of Data

USWC argued that the Commission's Order needlessly will require the parties to reenact the same exhaustive process that it went through in this proceeding when it takes up this issue in USWC's next rate case or Incentive Plan proceeding. USWC's argument is unpersuasive. If the Commission had adopted a surcharge for CENTRON resellers in this proceeding and conditions changed, it would be necessary to provide new updated data upon which to base adjustments to the rate design in the rate case or Incentive Plan proceeding. If conditions have not changed and the data is still relevant and adequate, there will be no need to provide additional data. Most likely, the data already gathered in this proceeding will become part of the data base used to make decisions in the future matter and will add to the value of that data base. In no sense, then, will the work accomplished in this current matter be wasted, as USWC suggested.

2. No Better Record is Possible

USWC argued that the Commission will not obtain more complete or enlightened information on the contribution impact of CENTRON resale in subsequent proceedings. In light of that fact, USWC stated that the Commission's decision to defer pricing and rate

design issues to a subsequent proceeding was inexplicable.

The Commission acknowledges the value of the record on that point but does not feel that it compels implementation of a surcharge at this time. The question is not whether the record is adequate to determine the narrow question of CENTRON resale's impact upon USWC but whether postponing this decision to a rate case or Incentive Plan proceeding will put the Commission in a better position to view this matter. The Commission believes it can benefit from taking a wider view of appropriate rates for the emerging resale market before adopting changes to the rate design. This wider view is only possible in a rate case or Incentive Plan proceeding.

3. No Direction on How to Improve the Record

USWC complained that the Order rejects the ALJ's findings on study methodology, the quantification of the CENTRON resale contribution impact and recommended rate design and failed to provide guidance on what the Commission will find acceptable in a subsequent proceeding.

In actuality, the Commission neither accepted nor rejected the ALJ's findings on those issues. Instead, the Commission stated that it preferred to make the ultimate decision regarding rate design in the context of a comprehensive review of USWC's rates. In light of that decision, there was no necessity for the Commission in the January 19, 1993 Order to make final determinations regarding study methodology and the quantification of the CENTRON resale contribution impact. The Order did not imply, as USWC alleged, that a better quantification of contribution impact should be provided in a subsequent proceeding. Of course, if any party believes that it can provide better information and analysis on this topic in the subsequent proceeding it should be encouraged to do so.

B. Arguments that the Decision to Defer the Rate Design Question was Arbitrary, Capricious, and Contrary to Law

1. Based on Faulty Premise Regarding Piecemeal Ratemaking

USWC argued that the Commission erred as a matter of law when it based its decision not to change the rate design at this time on the incorrect belief that its policy disfavoring "piecemeal rate design" prohibited it from doing so. To illustrate the non-existence of such a policy, USWC cited several instances in which the Commission made revenue neutral changes in USWC's rate design since its last rate design.

USWC has taken the Commission's reference to piecemeal rate design out of context and incorrectly assigned it a central role in the Commission's decision. In the paragraph containing the

reference to "piecemeal rate design," the Commission clearly stated its policy decision that it was preferable (not mandated) to address how USWC's rate design should be altered in response to ETI's CENTRON resale in the context of a comprehensive review of USWC's rates. There are a number of alternative local services now available to business, particularly small business, including various versions of 1FB/1FH, private shared tenant service, direct CENTRON, and CENTRON resale. The relative rates among these competing services has direct implications for overall contribution to USWC and the rates ultimately established for residual ratepayers.

Though not central to its decision here, the Commission clearly does have a history of disfavoring piecemeal rate design, USWC's arguments notwithstanding. The instances cited by USWC to disprove the existence of such a policy cannot be properly viewed as piecemeal rate design as that pejorative term is commonly understood. Clearly, not every revenue neutral rate design change occurring between rate cases is "piecemeal." In this case, however, the Commission believes that the term may be justifiably applied to the rate design change at hand because, for example, there are a number of other providers in the evolving local service market whose rates should be viewed in conjunction with CENTRON resellers to assure continuity of policy approach.

2. Failure to Give Proper Weight to and Explain
Deviation From ALJ Findings is Reversible Error

a. Proper Weight to Findings and Recommendations

USWC argued that the Commission did not give adequate deference to the ALJ's Report. USWC stated that the Commission should give great weight to and rely on the ALJ's Report, especially as to factual matters such as the quantification of the contribution impact of CENTRON resale.

Upon review, the Commission finds that it used the ALJ's Report properly. The Commission certainly has the right, under law, to reject findings made by the ALJ if its review of the record leads it to another conclusion. The Commission is not precluded from looking behind or beyond the ALJ's findings and reaching different conclusions. As indicated earlier, however, the Commission rejected no finding of fact made by the ALJ. Even in its area of legislative discretion (weighing the factors that constitute the public interest in this situation) the Commission reached the same conclusion that the ALJ did regarding the necessity of recovering the lost or displaced contribution from CENTRON resellers. The Commission stated:

The Commission's finding that CENTRON resale is in the public interest is predicated upon the understanding that a pricing plan for USWC's CENTRON service will be adopted that neutralizes any adverse impact of CENTRON

resale upon USWC's customers. Order, page 13.

Ultimately, the only difference between the ALJ's recommendation and the Commission's decision regards the timing of the adoption of the CENTRON pricing plan. The ALJ indicated that the plan should be adopted as part of the Order finding CENTRON resale to be in the public interest, but did not discuss the timing question or indicate that the simultaneous timing suggested in his recommendation was essential. In addressing the timing question in the January 19, 1993 Order, the Commission was clearly exercising its legislative discretion. It was and remains the Commission's view that the benefit to be gained by deferring the alteration of USWC's rate design to the rate case or Incentive Plan proceeding outweighs the detriment of not imposing a surcharge upon CENTRON resellers immediately.

b. Explanation of Departure From the ALJ Report

USWC appeared to argue that regardless of the merits of the Commission's decision on the timing issue, the Commission's failure to explain in its January 19, 1993 Order why it rejected the ALJ's findings of fact and recommendation constitutes reversible error on appeal.

First, the ALJ's Report does not consider the timing question at all. It does not weigh the pros and cons of deferring imposition of a neutralizing CENTRON pricing plan. Therefore, the Commission does not have the benefit of the ALJ's views on that subject. The Commission views its decision to defer imposition of a pricing plan as a further refinement rather than as a rejection of the ALJ's recommendation.

Second, upon review, the Commission finds that the January 19, 1993 Order adequately discusses the merits of deferring imposition of a CENTRON pricing plan. Order at page 13. In seeking reconsideration, USWC argued that the Commission misweighed the matter for two reasons:

First, USWC disputed the Commission's finding that USWC should bear any adverse impact from CENTRON resale because USWC employees were responsible for initially encouraging ETI to begin reselling CENTRON and did not alert the Commission to this activity as a problem in a timely manner. The Commission finds on review that the record supports that finding and clarifies the limited weight placed upon those findings. The Commission did not use these findings to reach a conclusion that resale of CENTRON is in the public interest without proper compensatory pricing, but simply as part of the considerations supporting the decision to temporarily defer imposition of the appropriate CENTRON pricing plan.

Second, USWC stated that the Commission failed to consider that the rate treatment of resellers during the interim period will 1) impact residual ratepayers rates when they are changed in

the Company's next rate case or Incentive Plan proceeding¹ and 2) reduce the ratepayers' share under USWC's Incentive Plan. However, the Commission has expressly stated that the pricing plan it will ultimately adopt for USWC's CENTRON service will be such that USWC's customers will receive no adverse impact of CENTRON resale. Order at page 13. Regarding reduction of the ratepayers' share under the Incentive Plan, given the sharing formula and the short interim period, the amount of the reduction attributable to the interim period will be de minimis.

III. COMMISSION ACTION

USWC has not provided any arguments that persuade the Commission that it weighed the timing question unsatisfactorily. The benefits of postponing the imposition of a pricing plan that neutralizes any adverse impact of CENTRON resale on USWC and its ratepayers to USWC's next rate case or Incentive Plan proceeding outweigh the detriments of not adopting that pricing plan at this time. A broad view of USWC's rates for all participants in the evolving local market, possible in a rate case or in an Incentive Plan proceeding, will be valuable. At the same time, postponing adoption of a surcharge for CENTRON resellers carries decidedly smaller detriment. Accordingly, USWC's Motion for Reconsideration of the Commission's January 19, 1993 Order in this matter will be denied.

ORDER

1. U S West Communications, Inc.'s (USWC's) Motion for Reconsideration is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

¹ The record shows that USWC loses no actual contribution at this time and the residual ratepayers' rates, of course, are not in fact raised by the "pressure" that CENTRON resale puts on USWC's revenues.